

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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MOISES JOSUE CORTEZ.

Plaintiff,

Case No. 3:21-CV-00316-ART-CLB

v.

BRANDON STUBBS, *et al.*,

Defendants.

ORDER DENYING PLAINTIFF'S MOTIONS

[ECF Nos. 45, 46]

Before the Court are two motions filed by Plaintiff Moises Josue Cortez ("Cortez"):

(1) a motion requesting issuance of a summons, (ECF No. 45); and (2) a motion for default. (ECF No. 46.) The Court will address each motion in turn.

I. MOTION FOR ISSUANCE OF A SUMMONS

First, Cortez has filed a “motion for issuance of summons.” (ECF No. 45.) The motion does not explain who Cortez is requesting a summons for. Rather, the motion simply states that service could not be perfected as to Defendants Shane Brown (“Brown”), Douglas Edwards (“Edwards”), and Janisha Henry (“Henry”). (*Id.* at 1.) Therefore, the Court construes this motion as a motion requesting the Court to reissue the summons and again order the United States Marshal (“USM”) to attempt to serve these three defendants.

On August 11, 2022, the Court ordered a summons to be issued for Defendants Brown, Edwards, and Henry and ordered the USM to attempt service at the last known addresses provided by the Office of Attorney General (“AG”) under seal for these defendants. (ECF No. 39.) Although the USM attempted to serve each of these defendants at the addresses provided, none could be served.

Specifically, as to Defendant Brown, the USM filed a process receipt stating Brown "no longer lives in WPC."¹ (ECF No. 42.) As to Defendant Edwards, the USM filed a

¹ It appears "WPC" refers to White Pine County, which is the county where the address under seal for Defendant Brown is located.

1 process receipt stating the address provided “does not exist.” (ECF No. 41.) Finally, as to
 2 Defendant Henry, the USM filed a process receipt stating Henry “does not live at the given
 3 address.” (ECF No. 43.)

4 There is no basis currently to issue a new summons for these defendants.
 5 However, considering the inability to serve Defendants at the addresses previously
 6 provided by the AG, the Court orders the AG to attempt to locate alternate or more current
 7 addresses for Defendants Brown, Edwards, and Henry. If the AG can locate alternate
 8 addresses for any of these defendants, the AG shall file the same under seal on or before
 9 **November 18, 2022**, or file a notice they are unable to locate more current addresses. If
 10 the AG can provide a more current address for any of these three defendants, the Court
 11 will then order the USM to make further attempts to serve them. If the AG is unable to
 12 locate a more current address, Cortez can proceed to litigate this case with the other
 13 appearing Defendants.

14 Therefore, Cortez’s motion issuance of a summons, (ECF No. 45), is **DENIED**,
 15 without prejudice.

16 **II. MOTION FOR DEFAULT**

17 Second, Cortez filed a document entitled “Declaration for Entry of Default.” (ECF
 18 No. 46.) The Court construes this document as a motion for default against Defendants.
 19 In the motion, Cortez asserts that Defendants were served “with a copy of summons, and
 20 a copy of the plaintiff (sic) complaint on the 1 (sic) day of July 2022.” (*Id.* at 1.) Cortez
 21 then claims that “110 days have elapsed since the date on which the defendants were
 22 served” and that “the defendants failed to answer or otherwise defend as to Plaintiff’s
 23 complaint, or serve a copy of any answer or any defense.” (*Id.* at 1-2.) In response to this
 24 motion, Defendants argue they did file an answer in this case and there is no basis for
 25 the entry of a default at this time. (ECF No. 47.) Defendants are correct.

26 On July 25, 2022, the Court granted Cortez’s motion for leave to file his “First
 27 Amended Complaint.” (ECF No. 32.) In that order, the Court directed the AG to file a
 28 notice within 21 days advising the Court whether or not it would accept service on behalf

1 of the named defendants and ordering any answer to be filed on or before September 23,
2 2022. (*Id.*) On August 10, 2022, the AG filed a “notice of acceptance of service” as to all
3 Defendants except the three defendants noted above. (ECF No. 36.) Shortly thereafter,
4 on September 20, 2022, the AG filed an answer on behalf of Defendants. (ECF No. 44.)
5 As such, there is no basis for entry of a default at this time as all Defendants who have
6 been served filed a timely answer. Therefore, Cortez’s motion for default, (ECF No. 46),
7 is **DENIED**.

8 **IT IS SO ORDERED.**

9 **DATED:** October 24, 2022.



10 **UNITED STATES MAGISTRATE JUDGE**

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